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**PALMATEER V. INTERNATIONAL HARVESTER CO.—  
RETALIATORY DISCHARGE OF AN  
EMPLOYEE FOR REFUSING TO  
OBSTRUCT JUSTICE HELD ACTIONABLE**

The established rule throughout the United States has long been that an employment contract of unspecified duration is terminable at the will of either the employer or the employee.<sup>1</sup> An employee may therefore quit or be fired at any time, with or without cause, and no liability arises for the termination.<sup>2</sup> For nearly 120 years Illinois courts have steadfastly adhered to this rule, despite its harsh impact upon employees discharged for unjust or ill-motivated reasons.<sup>3</sup>

In 1978, however, the Illinois Supreme Court in *Kelsay v. Motorola, Inc.*<sup>4</sup> held that an at-will employee could not be dismissed for bringing a worker's compensation claim against her employer. Such a retaliatory discharge offended the public policy embodied in the Illinois Workers' Compensation Act<sup>5</sup> and therefore gave rise to a cause of action for compensatory and

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1. Apparently, the rule was first enunciated in H. WOOD, A TREATISE ON THE LAW OF MASTER AND SERVANT § 134 (1877). According to Wood, an employee hired for an unspecified duration is prima facie terminable at will. The burden of proof is on the employee to show otherwise. *Id.* at 272. See *Adair v. United States*, 208 U.S. 161 (1908) (Supreme Court's early interpretation of the at-will rule); *Pfund v. Zimmerman*, 29 Ill. 269 (1862) (corresponding Illinois definition). See generally Summers, *Individual Protection Against Unjust Dismissal: Time For A Statute*, 62 VA. L. REV. 481, 484-91 (1976) [hereinafter cited as Summers]; Comment, *Protecting The Private Sector At Will Employee Who "Blows the Whistle": A Cause of Action Based Upon Determinants of Public Policy*, 1977 WIS. L. REV. 777, 782 [hereinafter cited as "Blows the Whistle"]; Note, *Tort Remedy for Retaliatory Discharge: Illinois Workmen's Compensation Act Limits Employer's Power to Discharge Employees Terminable-At-Will—Kelsay v. Motorola, Inc.*, 29 DEPAUL L. REV. 561, 562-63 (1979) [hereinafter cited as *Tort Remedy for Retaliatory Discharge*]; Note, *Protecting At Will Employees Against Wrongful Discharge: The Duty To Terminate Only In Good Faith*, 93 HARV. L. REV. 1816, 1824-28 (1980).

2. According to an early Tennessee case, an at-will employee can even be discharged for a "cause [that is] morally wrong." *Payne v. Western & Atl. R.R.*, 81 Tenn. 507, 520 (1884), overruled on other grounds, *Hutton v. Watters*, 132 Tenn. 527, 179 S.W. 134 (1915).

3. See *Long v. Arthur Rubloff & Co.*, 27 Ill. App. 3d 1013, 327 N.E.2d 346 (1st Dist. 1975). The *Long* court stated: "In [Illinois] the rule has long been established that a hiring at a monthly or annual salary, if no duration is specified in the contract, is presumed to be at will and either party may terminate the hiring at his pleasure without liability." *Id.* at 1023, 327 N.E.2d at 353. See also *Loucks v. Star City Glass Co.*, 551 F.2d 745 (7th Cir. 1977) (terminable at will employee had no private cause of action against his employer for retaliatory discharge after employee's exercise of right to compensation under Illinois' Workers' Compensation Act); *Buian v. J.L. Jacobs & Co.*, 428 F.2d 531 (7th Cir. 1970) (employee terminable at will despite employment contract provision providing for 18 months of service); *Atwood v. Curtiss Candy Co.*, 22 Ill. App. 2d 369, 161 N.E.2d 355 (1st Dist. 1959) (contract terminable at will when attorney hired for no specific time period but paid annual salary).

4. 74 Ill. 2d 172, 384 N.E.2d 353 (1978).

5. ILL. REV. STAT. ch. 48, §§ 138.1 - .28 (1979), as amended by P.A. 81-992, § 17 (1980).

punitive damages.<sup>6</sup> More recently, the Illinois Supreme Court relied upon the landmark *Kelsay* decision and held in *Palmateer v. International Harvester Co.*<sup>7</sup> that an at-will employee discharged for agreeing to co-operate with law enforcement officials in the prosecution of a co-employee had a cause of action against his employer for wrongful discharge.<sup>8</sup> A sharply divided supreme court thus significantly expanded the tort of retaliatory discharge<sup>9</sup> and cast considerable doubt upon the validity of several earlier decisions that denied recovery for alleged wrongful discharges of at-will employees.<sup>10</sup>

Ray Palmateer served as a manager for International Harvester Company (I-H) for over eleven years. Aware of another I-H employee's possible crimes, Palmateer approached the Rock Island County States Attorney's Office and offered to testify and gather additional evidence against the suspect employee. As a result, I-H discharged Palmateer, stating Palmateer's refusal to comply with the company's requests not to supply law enforcement authorities with information concerning the incident and Palmateer's agreement to assist in the investigation and trial of the employee if requested as reasons for the dismissal.<sup>11</sup> Palmateer, in turn, filed a tort action against the company claiming his retaliatory discharge was within the purview of the *Kelsay* decision.

The circuit court of Rock Island County granted a motion to dismiss Palmateer's suit for failure to state a cause of action,<sup>12</sup> which the appellate court affirmed in a divided opinion.<sup>13</sup> After determining that Palmateer was an at-will employee and thus terminable for any or no reason, the appellate court grudgingly recognized the tort of wrongful discharge—arising upon the employer's violation of a contract provision, a statute, or public policy—as an exception to the general rule of termination.<sup>14</sup> The appellate

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6. For a thorough discussion of an employee's remedies for retaliatory discharge, see *Tort Remedy for Retaliatory Discharge*, *supra* note 1, and cases cited therein.

7. 85 Ill. 2d 124, 421 N.E.2d 876 (1981).

8. *Id.* at 133, 421 N.E.2d at 880. An employee's public charge that his employer or co-employee is or has been involved in unlawful activity is sometimes referred to as "whistle-blowing." Of course, an employee who chooses to blow the whistle does so at the peril of losing his or her job. According to one commentator, the whistle blower's "dilemma is one of balancing a public interest against the potential of private loss, with the employee losing either way." *"Blows The Whistle," supra* note 1, at 779.

9. The tort of retaliatory, or wrongful, discharge was first created in 1959 by a California court of appeals in *Petermann v. Teamsters Local 396*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959). It was first adopted in Illinois in *Leach v. Lauhoff Grain Co.*, 51 Ill. App. 3d 1022, 366 N.E.2d 1145 (4th Dist. 1977). The *Leach* holding was later approved by the Illinois Supreme Court in *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 384 N.E.2d 353 (1978).

10. See note 3 *supra*.

11. 85 Ill. 2d at 124, 421 N.E.2d at 877.

12. *Id.*

13. *Palmateer v. International Harvester Co.*, 85 Ill. App. 3d 50, 406 N.E.2d 595 (3d Dist. 1980).

14. *Id.* at 52, 406 N.E.2d at 597-98. While the concept of public policy may be subject to many interpretations, it is generally recognized that it is "that principle of law which holds, that

court then noted, however, that the only Illinois cases utilizing the public policy exception involved workers' compensation claims.<sup>15</sup> With no Illinois precedent to guide it, the appellate court refused to extend the *Kelsay* tort of retaliatory discharge to cover Palmateer's termination, expressing reluctance to make new law absent "cogent reasons."<sup>16</sup> The court similarly dismissed the second count of Palmateer's complaint which alleged intentional infliction of mental distress.<sup>17</sup>

By contrast, the dissent thoroughly reviewed case law from foreign jurisdictions and closely examined provisions of the Illinois Criminal Code and the law enforcement policy manifested therein. The persuasive and well-reasoned dissent argued that cogent reasons did indeed exist for extending *Kelsay* to the case at hand and declared that discharging Palmateer in retaliation for cooperating with law enforcement authorities "clearly violate[d] public policy."<sup>18</sup>

On appeal, the Illinois Supreme Court reversed the opinion of the appellate court in a four to three decision.<sup>19</sup> The supreme court based its opinion on public policy,<sup>20</sup> which the court stated was, "[t]he foundation of the tort of retaliatory discharge."<sup>21</sup> The supreme court, in noting the absence of a precise definition for the term "public policy,"<sup>22</sup> surveyed cases from other states and found that where "a matter . . . , strike[s] at the heart of a citizen's social rights, duties, and responsibilities," the tort of retaliatory discharge should be allowed.<sup>23</sup> Referring to the case at bar, the court

no subject or citizen can lawfully do that which has a tendency to be injurious to the public, or against the public good." *People ex rel. Peabody v. Chicago Gas Trust Co.*, 130 Ill. 268, 294, 22 N.E. 798, 803 (1889).

15. 85 Ill. App. 3d at 52, 406 N.E.2d at 597.

16. *Id.*

17. *Id.* at 53, 406 N.E.2d at 598. The court held that outrageous conduct by the tortfeasor was required to sustain a cause of action for intentional infliction of mental distress and that Palmateer's employer, acting within his rights, was not guilty of outrageous conduct. Notwithstanding the fact that the plaintiff did not prove mental distress, Count II of his complaint was not so far-fetched. In *Agis v. Howard Johnson Co.*, 371 Mass. 140, 355 N.E.2d 315 (1976), the Massachusetts Supreme Judicial Court held that the manager of a restaurant who had fired waitresses in alphabetical order to force them to reveal who had stolen food from the restaurant's kitchen was guilty of the intentional infliction of emotional harm. *See also "Blows the Whistle," supra* note 1, at 779 n.16 (discharged employee may suffer emotional and psychological harm).

18. 85 Ill. App. 3d at 54, 406 N.E.2d at 598 (Barry, J., dissenting).

19. 85 Ill. 2d 124, 421 N.E.2d 876 (1981).

20. "Public policy favors Palmateer's conduct in volunteering information to the law enforcement agency" and "[p]ublic policy thus also favors Palmateer's agreement to assist in the investigation and prosecution of the suspected crime." *Id.* at 133, 421 N.E.2d at 880.

21. *Id.*

22. *Id.* at 130, 421 N.E.2d at 878.

23. *Id.* The court cited as examples: *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980) (for refusing to engage in price-fixing); *Petermann v. Teamsters Local 396*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959) (for refusing to commit perjury); *O'Sullivan v. Mallon*, 160 N.J. Super. 416, 390 A.2d 149 (1978) (for refusing to practice medicine without a license); *Harless v. First National Bank*, 246 S.E.2d 270 (W.Va. 1978) (for refusing to violate a consumer credit code).

characterized Palmateer's conduct—volunteering information to a law enforcement agency—as being “favored” by public policy.<sup>24</sup> As a result of such conduct, the court stated that “Palmateer was under a statutory duty to further assist officials,”<sup>25</sup> as mandated by public policy.

In a lengthy dissent, Justice Ryan, joined by Justice Moran, criticized the majority for extending the cause of action for retaliatory discharge “into the nebulous area of judicially created public policy.”<sup>26</sup> According to Justice Ryan, the search for a definition of public policy begins and ends with the legislature. Moreover, he expressed concern that the court would be contributing to the deteriorating business climate of the state by creating a vague concept of public policy.<sup>27</sup> As such, Justice Ryan concluded that an action for retaliatory discharge should not be maintained in the absence of a strong and clearly articulated public policy.<sup>28</sup>

While the public policy exception has been narrowly circumscribed by the courts that have adopted it, most jurisdictions have concluded that an employer's conscious attempt to obstruct justice, as in *Palmateer*, patently violates “what is right and just, good morals, [and] natural justice.”<sup>29</sup> In fact, in *Petermann v. Teamster Local 396*,<sup>30</sup> the California Court of Appeals

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24. 85 Ill. 2d at 133, 421 N.E.2d at 880. “Public policy favors the exposure of crime, and the cooperation of citizens possessing knowledge thereof is essential to effective implementation of that policy.” *Id.* at 132, 421 N.E.2d at 880 (quoting *Joiner v. Benton Community Bank*, 82 Ill. 2d 40, 44, 411 N.E.2d 229, 231 (1980)).

25. *Id.*

26. *Id.* at 136, 421 N.E.2d at 881.

27. *Id.* at 143, 421 N.E.2d at 885. Justice Ryan noted that:

[A] vague concept of public policy [would] permit an employer to discharge an unwanted employee, who could be completely disruptive of labor-management relations through his police spying and citizen crime-fighter activities only at the risk of being sued in tort not only for compensatory damages, but also for punitive damages.

*Id.*

28. *Id.* at 145, 421 N.E.2d at 885.

29. *Palmateer v. International Harvester Co.*, 85 Ill. App. 3d at 54, 406 N.E.2d at 599 (Barry, J., dissenting). See *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980) (forced participation in illegal scheme to fix retail gasoline prices); *Petermann v. Teamsters Local 396*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959) (forced commission of perjury); *Nees v. Hocks*, 272 Or. 210, 536 P.2d 512 (1975) (prevention of jury service); *Reuther v. Fowler & Williams, Inc.*, 255 Pa. Super. Ct. 28, 386 A.2d 119 (1978) (prevention of jury service). Jurisdictions which have not extended the cause of action have, nevertheless, regarded obstruction of justice a compelling reason for applying the retaliatory discharge doctrine. See, e.g., *Percival v. General Motors Corp.*, 400 F. Supp. 1322, 1323-24 (E.D. Mo. 1975) (public policy against forcing employee to commit a crime), *aff'd*, 539 F.2d 1126 (8th Cir. 1976); *Larsen v. Motor Supply Co.*, 117 Ariz. 507, 508, 573 P.2d 907, 908 (1977) (violation of criminal statute is a prime target for recognition of a cause of action); *Roberts v. Atlantic Richfield Co.*, 88 Wash. 2d 887, 892, 568 P.2d 764, 767-68 (1977) (discharge because of a refusal to engage in criminal acts such as perjury would be actionable). See also *People v. Vitucci*, 49 Ill. App. 2d 171, 199 N.E.2d 78 (4th Dist. 1964) (employer was guilty of contempt for dismissing an employee who missed work because of jury service).

30. 174 Cal. App. 2d 184, 344 P.2d 25 (1959).

became the first tribunal to recognize the tort of retaliatory discharge, and did so when confronted with a firing motivated by an employee's refusal to commit perjury. The court in *Petermann* believed that condoning such unlawful conduct by employers would corrupt the workplace and disrupt public affairs.<sup>31</sup> The *Petermann* holding was recently reaffirmed and fortified by the California Supreme Court in *Tameny v. Atlantic Richfield Co.*,<sup>32</sup> a case in which an employee was dismissed for refusing to fix illegal retail gasoline prices. The *Tameny* court noted that "[t]he days when a servant was practically the slave of his master have long since passed"<sup>33</sup> and that limits necessarily exist on the employer's ability to condition employment on factors unrelated to the job. Indeed, according to the *Tameny* court, perhaps the most crucial limit concerns contravening a state's penal code.<sup>34</sup>

Public policy exceptions recognized by other jurisdictions include the testing of drugs on human subjects;<sup>35</sup> violation of state consumer credit and protection laws;<sup>36</sup> the prevention of jury services;<sup>37</sup> sexual harassment;<sup>38</sup> the performance of medical tasks outside one's capability or legal capacity;<sup>39</sup> the taking of a polygraph test;<sup>40</sup> participation in a fraudulent scheme;<sup>41</sup> and, of course, intimidation of employees filing workers' compensation suits.<sup>42</sup> In

31. *Id.* at 188-89, 344 P.2d at 27.

32. 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980).

33. *Id.* at 178, 610 P.2d at 1336, 164 Cal. Rptr. at 845 (quoting *Greene v. Hawaiian Dredging Co.*, 26 Cal. 2d 245, 251, 157 P.2d 367, 370 (1945)).

34. 27 Cal. 3d at 178, 610 P.2d at 1336, 164 Cal. Rptr. at 845. *Accord*, *Tort Remedy for Retaliatory Discharge*, *supra* note 1, at 581-82 (the common law tort of retaliatory discharge easily can be extended beyond the facts of the *Kelsay* case because the public policy against criminal activity is at least as strong as that manifested in Illinois' Workers' Compensation Act).

35. *See, e.g.*, *Pierce v. Ortho Pharmaceutical Corp.*, 84 N.J. 58, 417 A.2d 505 (1980) (employee discharged for refusing to participate in the production of a drug to be used in human testing; employment contract terminable at will, and Hippocratic oath contained no mandate of public policy that would prevent the research, thus no cause of action).

36. *See, e.g.*, *Harless v. First Nat'l Bank*, 246 S.E.2d 270 (W. Va. 1978) (cause of action for wrongful discharge arose since plaintiff was discharged for efforts to make employer comply with federal consumer credit laws).

37. *See, e.g.*, *Nees v. Hocks*, 272 Or. 210, 536 P.2d 512 (1975) (cause of action for wrongful discharge against employer who fired employee for serving on jury duty). *See also* *Reuther v. Fowler & Williams, Inc.*, 255 Pa. Super. Ct. 28, 386 A.2d 119 (1978).

38. *See, e.g.*, *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974) (female plaintiff fired for refusing to date her superior).

39. *See, e.g.*, *O'Sullivan v. Mallon*, 160 N.J. Super. 416, 390 A.2d 149 (1978) (x-ray technician discharged for refusing to perform catheterizations that could only be legally performed by a physician).

40. *See, e.g.*, *Perks v. Firestone Tire & Rubber Co.*, 611 F.2d 1363 (3d Cir. 1979) (Pennsylvania law that prohibited polygraph tests as a condition of employment embodied a "recognized facet of public policy").

41. *See, e.g.*, *Koch Indus., Inc. v. Vosko*, 494 F.2d 713 (10th Cir. 1974) (employee discharged as a step in a fraudulent course of conduct by the employer could recover despite contract provision that allowed termination for any cause upon 30 days notice).

42. *See, e.g.*, *Frampton v. Central Ind. Gas Co.*, 260 Ind. 249, 297 N.E.2d 425 (1973). The Indiana court in *Frampton*, faced with no workmen's compensation retaliatory discharge prece-

addition, legislation has been passed by Congress to outlaw discharge based on union membership and activity;<sup>43</sup> military duty;<sup>44</sup> civil service;<sup>45</sup> garnishment of wages for any one indebtedness;<sup>46</sup> and personal characteristics.<sup>47</sup> Finally, the courts of at least two states, Massachusetts<sup>48</sup> and New Hampshire,<sup>49</sup> have implied a good faith requirement in at-will employee contracts, barring discharges motivated by retaliation or malice.

The supreme court in *Palmateer* acknowledged such ample, compelling case law and legislation favoring exceptions to the at-will rule. Indeed, an important aspect of the *Palmateer* decision is its discussion of case law and legislation, in addition to constitutional principles, as a means to define and expand public policy.<sup>50</sup> The court refused, however, to restrict its search for public policy to these sources. Whereas dissenting Justices Ryan and Moran stressed that "public policy is first and foremost a matter of legislative concern,"<sup>51</sup> the majority held that a cause of action may also be allowed if

dent, looked to landlord and tenant law. The court created a cause of action by analogizing to the concept of retaliatory eviction which, in most states, may be raised by the tenant as a defense to the landlord's action for possession of the premises. *Id.* at 252, 297 N.E.2d at 428. *Cf.* *Dockery v. Lampart Table Co.*, 36 N.C. App. 293, 244 S.E.2d 272 (1978). The *Dockery* court refused to follow *Frampton* because the state of North Carolina had not yet recognized the defense of retaliatory eviction. 36 N.C. App. at 296, 244 S.E.2d at 274.

43. *See* NLRB v. Fleetwood Trailer Co., 389 U.S. 375 (1967) (construing 29 U.S.C. §§ 158(a)(1) and (3) which prohibit discharge of an employee for engaging in lawful labor activities); NLRB v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938) (same). *See generally* National Labor Relations Act of 1935, 29 U.S.C. §§ 151-68 (1976).

44. *See* 29 U.S.C. § 623 (1976); 38 U.S.C. §§ 2021-26 (1976).

45. 5 U.S.C. § 7501(a) (1976) (prohibiting discharge of civil service employees except for cause).

46. *See* *Stewart v. Travelers Corp.*, 503 F.2d 108 (9th Cir. 1974) (court construed subchapter II of the Consumer Credit Protection Act of 1968, 15 U.S.C. §§ 1601-81 (1976)).

47. *See* *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) (construing 42 U.S.C. § 2000e-2(a)(1) which prohibits discharge of an employee on account of race or sex); *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973) (same). *See generally* 42 U.S.C. §§ 2000e to 2000e-15 (1976). This statute, Title VII of the Civil Rights Act of 1964, also prohibits discharge based on national origin, religion, or color. According to one commentator, "[s]tatutes prohibiting discrimination because of race, creed, nationality, sex, and age now blanket all public and private employment." Summers, *supra* note 1, at 493.

48. *See* *Fortune v. National Cash Register Co.*, 373 Mass. 96, 364 N.E.2d 1251 (1977) (terminable-at-will employment contract breached when discharge made in bad faith).

49. *See* *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974). *See* note 25 *supra* for a brief discussion of the dismissal in *Monge*. According to the *Monge* court, "the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two." 114 N.H. at 133, 316 A.2d at 551. The court acknowledged a more open relationship between employers and employees and a more liberal attitude regarding employees' rights and urged other courts to recognize this. *Id.* at 133, 316 A.2d at 551. *See also* *Pstragowski v. Metropolitan Life Ins. Co.*, 553 F.2d 1 (1st Cir. 1977) (applying New Hampshire law and the "*Monge* rule").

50. 85 Ill. 2d at 130-32, 421 N.E.2d at 878-80.

51. *Id.* at 137, 421 N.E.2d at 882 (Ryan and Moran, JJ., dissenting).

the policy is clear and it concerns public, not only private, interests.<sup>52</sup> The public policy involved in *Palmateer* is a product of all of these sources.

Notwithstanding the court's claim to the contrary,<sup>53</sup> the statutory basis for the support of the conduct engaged in by *Palmateer* may be found in the Illinois Criminal Code of 1961. The Code condemns: (1) obstruction of justice, (2) refusal to aid a police officer, (3) interference with jurors or witnesses called to testify, and (4) compounding of crimes.<sup>54</sup> The Code was further amended in 1980 to prevent punishment or discharge of an employee who must be absent from work in order to testify at a criminal proceeding.<sup>55</sup> Moreover, the court itself noted that prior Illinois decisions had admonished employers for discharges resulting in obstruction of justice,<sup>56</sup> and that enforcement of the criminal code is constitutionally mandated because it is "implicit in the concept of ordered liberty."<sup>57</sup> Finally, the *Palmateer* court determined that public policy clearly favors participation in the effort to curb crime and the protection and encouragement of "citizen crime-fighters."<sup>58</sup> For the criminal justice system to be effective, citizens must feel free to come forward with evidence of wrongdoing, whether the perpetrators are complete strangers, neighbors, fellow employees, or employers. Intimidating employees performing this duty can only serve to disrupt the legal system and must surely violate the very tenets of democratic society. Consider the compelling argument of the Illinois Supreme Court in response to a Chicago woman afraid to testify because of possible gang retaliation:

[O]ne of the problems that the Court has is that unless we receive the cooperation of the citizens who see certain alleged events take place these events are not going to be rooted out, nor are perpetrators of these acts going to be brought before the bar of justice unless citizens stand up to be counted, and I think this [fear] is not a valid reason for not testifying. If it's a valid reason then we might as well close the doors.<sup>59</sup>

*Palmateer* also merits examination because of the doubt it casts upon recent Illinois Appellate Court decisions which attempted to severely limit the *Kelsay* doctrine. For example, shortly after the Third District Appellate Court held for I-H in *Palmateer*, the same court, in *Cook v. Caterpillar Tractor Co.*,<sup>60</sup> denied relief to an employee because he failed to exhaust his

52. *Id.* at 131, 421 N.E.2d at 879.

53. *Id.* at 132, 421 N.E.2d at 880.

54. ILL. REV. STAT. ch. 38, §§ 31-4 to 32-4 (1979).

55. *Id.* at § 155-3, as amended by P.A. 81-808, § 8 (1980).

56. 85 Ill. 2d at 129, 421 N.E.2d at 878.

57. *Id.* at 132, 421 N.E.2d at 879.

58. *Id.*

59. *People v. Carradine*, 52 Ill. 2d 231, 234, 287 N.E.2d 670, 672 (1972).

60. 85 Ill. App. 3d 402, 407 N.E.2d 95 (3d Dist. 1980). Presiding Justice Stouder wrote the majority opinions in both *Palmateer* and *Cook*; Justice Barry was the lone dissenter in both cases.



remedies under a collective bargaining agreement that permitted discharge only for just cause. The *Cook* dissent correctly distinguished between an allegation that Cook's discharge was unlawful because it violated the terms of the collective bargaining agreement and an allegation that his discharge was unlawful because it was in retaliation for Cook's pursuing workers' compensation relief. Because the case involved the latter complaint and not the former, the dissent concluded that the cause of action "sound[ed] not in contract, but in tort"<sup>61</sup> and that it could therefore be maintained independent of the collective bargaining agreement. The dissent also demonstrated that the terms of the agreement did not provide a remedy for retaliatory discharge. Despite the dissent's convincing analysis, the majority concluded that Cook's discharge was not actionable, thus even raising doubts about the vitality of actions for workers' compensation-related dismissals, a problem expressly resolved by the Illinois Supreme Court in *Kelsay*.

In *Rozier v. St. Mary's Hospital*,<sup>62</sup> the Fifth District Appellate Court followed the trend begun by the Third District and dealt a further blow to the *Kelsay* public policy exception. Citing the appellate court's decision in *Palmateer*, the *Rozier* majority held that discharging a nurse for informing a local newspaper of the immoral and improper acts of other hospital employees was not actionable. While the court declared that the first and fourteenth amendments ensured Rozier's right to disclose information to "her neighbor, a taxi driver, or the [local] Metro East Journal,"<sup>63</sup> it denied that she was thereby immunized against losing her private sector job. This argument, of course, ignored the fact that most employees in Rozier's position would forsake "blowing the whistle"<sup>64</sup> on their co-employees, superiors or employers to retain their jobs.

In light of the appellate court decisions in *Palmateer*, *Cook*, and *Rozier*, it appeared that the *Kelsay* doctrine would not be expanded under almost any circumstances and that *Kelsay* would be viewed as little more than a limited exception to the at-will rule. By reversing the appellate court in *Palmateer* and extending the tort of retaliatory discharge to cover all violations of public policy in general, the Illinois Supreme Court significantly broadened the scope of *Kelsay*. It remains to be seen whether the appellate court will be inclined to expand the *Kelsay* tort along the lines of general public policy notions announced in *Palmateer*.

The *Palmateer* decision should be lauded for its progressive view of employer-employee relations. Although the law in this area is gradually evol-

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61. *Id.* at 407, 407 N.E.2d at 99 (Barry, J., dissenting).

62. 88 Ill. App. 3d 994, 411 N.E.2d 50 (5th Dist. 1980).

63. *Id.* at 1000, 411 N.E.2d at 55. The court also held that the defendant apparently did not tell the truth about her report to the newspaper when she was given a lie detector test before her discharge. The court felt that this alone was reason enough for the plaintiff's employer to discharge her, notwithstanding her claim that she had informed her superiors of the conduct in question before going public because her superiors failed to remedy the situation. *Id.* at 999-1000, 411 N.E.2d at 55.

64. See note 8 *supra*.

ing to reflect "changing legal, social and economic conditions,"<sup>65</sup> for the most part the at-will rule remains in force throughout the country. The reluctance of Illinois courts to challenge this rule even after the seminal *Kelsay* decision prompted Illinois Appellate Court Justice Barry to dissent in *Cook v. Caterpillar Tractor Co.*:

The result reached in this case and in *Palmateer* . . . reflects a conservatism in matters of employer-employee relations which I find disturbing, and assures to employers that the tort of retaliatory discharge, although recognized by our supreme court, is virtually non-existent in the Third District.<sup>66</sup>

Quite clearly, however, the Illinois Supreme Court's *Palmateer* decision admits considerable hope that the at-will doctrine will be ameliorated<sup>67</sup> in Illinois by expansion of the *Kelsay* public policy exception and that the tort of retaliatory discharge is indeed alive and well in Illinois' third, and other, appellate districts.

65. *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 132, 316 A.2d 549, 551 (1974).

66. 85 Ill. App. 3d at 409, 407 N.E.2d at 101 (Barry, J., dissenting).

67. Despite the notion of some that the at-will rule benefits both the employer and employee, e.g., *Rozier v. St. Mary's Hosp.*, 88 Ill. App. 3d 994, 999, 411 N.E.2d 50, 54 (5th Dist. 1980) (rule prevents employers from harassing employees who seek to change jobs), it actually works a hardship on both parties and on society as well. "[T]he employer loses an otherwise capable employee and must spend considerable time and effort to train a replacement; the employee loses his source of income and may become dependent upon unemployment compensation or welfare. . . ." *Johnson v. Pike Corp. of Am.*, 332 F. Supp. 490, 496 (C.D. Cal. 1971).

